STATE OF MICHIGAN

COURT OF APPEALS

KEITH RISSMAN,

Plaintiff-Appellant,

V

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

UNPUBLISHED
September 6, 2005

No. 261392
Wayne Circuit Court
LC No. 02-237278-CZ

Before: Saad, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right from an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10) in this employment contract dispute. We reverse and remand.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A trial court properly grants a motion for summary disposition under MCR 2.116(C)(10) when no genuine issue of material fact remains for trial and a party is entitled to judgment as a matter of law. In deciding a motion under MCR 2.116(C)(10), a court considers all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 30-31; 651 NW2d 188 (2002). The nonmoving party must present more than mere allegations to establish a genuine issue of material fact for resolution at trial. *Id.* at 31. In addition, the proper interpretation of a contract is a question of law which this Court reviews de novo. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003).

Plaintiff argues that defendant was required to reinstate him to his former position as an hourly employee when it terminated his salaried position without cause and that the compensation statements that he signed did not modify this oral agreement that the parties reached years before his termination. In this case, we are required to analyze and interpret the compensation statements to determine whether they nullified the earlier agreement between the parties. In interpreting a contract, this Court's obligation is to determine the intent of the parties. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). This Court must examine the language of the contract and accord words their ordinary and plain meanings if such meanings are apparent. *Wilkie, supra* at 47. If the language is unambiguous, courts must interpret and enforce the contract as written. *Quality Products, supra* at 375. "Thus, an unambiguous contractual provision is reflective of the parties' intent as a

matter of law." *Id*. A contract is ambiguous only when two of its provisions irreconcilably conflict, *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003), or when a provision of the contract "is *equally* susceptible to more than a single meaning." *Mayor of Lansing v Pub Service Comm*, 470 Mich 154, 166; 680 NW2d 840 (2004).

The trial court conceded that the reference to "my basic employment agreement" in the compensation statements could be to an earlier oral agreement between the parties in which plaintiff retained the conditional right to return to hourly employment. Nevertheless, it concluded that the compensation statements' provision that plaintiff's employment was month-to-month meant that plaintiff's basic employment agreement provided that his employment was at will and that the "month-to-month" provision effectively nullified the earlier agreement requiring defendant under certain circumstances to return plaintiff to hourly employment.

The key issue in this case is the meaning of the phrase "my employment agreement." The compensation statements provided that they were "a part of my 'employment agreement,'" and that they "become[] a part of my basic 'employment agreement'." Plaintiff testified at his deposition that in 1983 when he was considering the salaried position, he told Daryl Delinardous that he would not take the job unless he retained hourly recall rights and that "if General Motors got dissatisfied with me, that I'd be allowed to go back, or if I was dissatisfied with the job, I would be allowed to go back." Plaintiff testified that Delinardous assured him that he retained those rights, and they "shook hands over it."

A valid contract requires "'(1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.'" *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005), quoting *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991). Oral statements can give rise to an enforceable contract as long as the oral assurances are clear and unequivocal. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 171-172; 579 NW2d 906 (1998). Arguably, plaintiff's discussion with Delinardous in 1983 created an enforceable employment contract: Delinardous' assurances were clear and unequivocal that if either party became dissatisfied with the working arrangement, plaintiff would be permitted to return to his hourly position. Thus, the agreement in 1983 constituted plaintiff's employment contract with defendant.[1] See *Allore v General Motors Corp*, 60 F3d 828 (CA 6, 1995) (recognizing that defendant's promise identical to that at issue in the instant case constituted a valid contract).

Because the 1983 agreement was the only employment agreement that the parties entered into, the phrase "my employment agreement" in the compensation statements should be construed as referring to this agreement. Defendant argues that this phrase has no meaning here because plaintiff never signed an employment agreement. A contract, however, need not be in writing to be enforceable. *Quality Products, supra* at 371; *Rice v ISI Mfg, Inc*, 207 Mich App

[1] We assume for purposes of this appeal that plaintiff's version of the circumstances leading to the formation of the employment agreement is accurate. Defendant does not contest plaintiff's factual assertions, but rather argues that regardless of whether such an agreement existed, the compensation statements nullified the agreement.

634, 636-637; 525 NW2d 533 (1994). Thus, he argues that the references in the compensation statements to plaintiff's "employment agreement" refer to the 1983 agreement between the parties that plaintiff be returned to hourly employment should either party become dissatisfied with the arrangement.

The compensation statements expressly state that they became "a part" of plaintiff's employment agreement. We conclude that the trial court ignored this language and incorrectly determined that the compensation statements effectively replaced the 1983 employment agreement. It appears to us that it is more logical to interpret the compensation statements as "a part" of plaintiff's employment agreement; consequently the provisions designating plaintiff's employment as "month-to-month" pertain to his salaried employment. They did not nullify or replace the 1983 agreement that he be allowed to return to hourly employment.

Defendant also argues that the phrase in the compensation statements indicating that the statements "reaffirm[] that my employment is from month-to-month" refers to plaintiff's "employment" without specifying hourly or salaried employment; therefore, the statements refer simply to the fact of plaintiff's employment with defendant. But under the doctrine of *noscitur a sociis*, the term "employment" as used in the above phrase refers to plaintiff's salaried employment only. The doctrine requires that the term be interpreted in light of the words surrounding it and "stands for the principle that a word or phrase is given meaning by its context or setting." *Tyler v Livonia Public Schools*, 459 Mich 382, 390-391; 590 NW2d 560 (1999). The compensation statements indicate a change in salary and acknowledge that plaintiff was classified "as an exempt employee under the provisions of the Fair Labor Standards Act." The statements establish plaintiff's salary and confirm that other than the amount of compensation indicated, no other compensation was due plaintiff. Moreover, the statements specifically refer to plaintiff's salaried supervisory position and state that they replace any previous compensation statements. Thus, it is clear from the face of the compensation statements that the use of the word "employment" pertains specifically to plaintiff's non-union, salaried position as a supervisor. In addition, the fact that plaintiff signed the statements before 1990 when defendant changed its policy regarding salaried employees returning to hourly positions indicates that the compensation statements themselves did not replace or nullify plaintiff's earlier agreement allowing him to return to hourly employment. As plaintiff argues, if that were the case, there would have been no need for, nor would he not have been asked to sign a waiver of his hourly recall rights in 1990.

Defendant next contends that the integration clause in the compensation statements recognizing that "[t]here are no other arrangements, agreements, understandings, or statements, verbal or in writing, except as stated above," extinguished any previous oral agreement. The phrase "except as stated above," however, expressly recognized that other employment agreements may exist if they are acknowledged in the preceding paragraphs of the compensation statements. As previously discussed, the term "employment agreement" used in the previous paragraphs of the compensation statements should be construed as referring to the parties' 1983

agreement. Thus, because the employment agreement was "stated above," the integration clause did not preclude or nullify any previous agreement.[2]

Finally, defendant argues that plaintiff never had a unilateral right to return to hourly employment and that his eligibility to return to his position within the collective bargaining agreement existed only if he were facing lay-off because of a reduction in work force.[3] Defendant relies on its policy manual for salaried employees, the "Working with General Motors" handbook, and a 1989 memo from David E. Mowers from defendant's personnel administration and development staff. Defendant's policy and procedure manual, specifically states that a salaried employee with "prior hourly-rate seniority in the division, but who cannot be continued in a salaried position because of a declining volume of business *or other general causes not the fault of the employe [sic]*" should be transferred to an hourly position. In addition, Mowers' memo, dated October 20, 1989, expressly states that with respect to salaried employees returning to the hourly payroll, Mowers "could find no all-encompassing policy provisions on the subject." Moreover, when defendant implemented a new policy in 1990 regarding salary to hourly transitions, the new policy stated that the employment status of persons who chose to retain "return-to-hourly" eligibility would not be affected and that these employees would continue to be eligible to return to hourly employment "in the event of a reduction in force *or any other event that, in the past, may have resulted in an employ [sic] returning to hourly*." Thus, it appears that plaintiff's right to return to hourly employment may

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[2] Defendant also relies on *Singal v General Motors Corp*, 179 Mich App 497, 505; 447 NW2d 152 (1989) and *Taylor v General Motors Corp*, 826 F2d 452, 457-458 (CA 6, 1987), in support of its argument that courts have previously relied on integration language like that in the compensation statements excluding any previous agreements or arrangements. Contrary to defendant's implication, the courts in those cases did not rely solely on integration language, but rather, on written employment agreements specifically stating that the plaintiffs' employment was on a "month-to-month" basis. *Singal*, *supra* at 499, 505; *Taylor*, *supra* at 453-454, 457-458. Defendant also relies on *Schultes v Naylor*, 195 Mich App 640, 643-644; 491 NW2d 240 (1992), for the proposition that courts have previously found summary disposition for defendant appropriate based on the same compensation statements that plaintiff signed in this case. Again, however, in *Schultes* the plaintiff signed a written employment agreement indicating that her employment was on a month-to-month basis in addition to the subsequent compensation statements that she signed. *Id*. at 643. Further, this Court held that the plaintiff failed to produce any evidence corroborating her claim that she and defendant had a just-cause employment relationship. *Id*. at 644.

[3] Defendant relies on *Villines v General Motors Corp*, 324 F3d 948 (CA 8, 2003), in support of its argument. That case involved circumstances similar to this case. In that case, two of defendant's employees transferred from hourly to salaried employment and were promised that they would be able to return to hourly employment if they chose. *Id*. at 950-951. In holding that the plaintiffs did not have a right to return to hourly employment, however, the court relied on written employment agreements stating that the plaintiffs "agree[d] to devote [their] time and service in the employ of the Employer in such capacity as the Employer may direct." *Id*. at 951. The agreements also contained an integration clause. *Id*. The court held that the employment agreements were unambiguous and that they reserved defendant's right to direct the capacity in which the plaintiffs were employed. *Id*. at 952-953.

not have been solely contingent on a lay-off in work force, or, as plaintiff contends, invocable upon the mere dissatisfaction of either party. In fact, plaintiff returned to hourly employment from a salaried position in 1979 to complete an electrical apprenticeship. Accordingly, it appears that defendant's policy regarding this issue is somewhat unclear so that a genuine issue of material fact exists. In any event, we find on our de novo review that the trial court incorrectly determined that the compensation statements nullified any employment agreement and erroneously granted summary disposition on this basis. On remand, the trial court should proceed to address the question of whether plaintiff engaged in the charged 2001 misconduct which the employer claims is the reason for plaintiff's termination. If plaintiff engaged in the alleged misconduct, then his termination should be affirmed by the trial court. Plaintiff contends that the original agreement allowed plaintiff to return to an hourly position if the employer is dissatisfied with plaintiff's performance, or plaintiff is dissatisfied with the salaried position. Plaintiff does not contend that the original agreement afforded plaintiff immunity from termination for misconduct. Indeed, plaintiff conceded at oral argument before our Court that such misconduct vitiates the agreement to return to an hourly position. If it is determined that plaintiff did not engage in the charged misconduct, then the court should address whether the parties entered into the agreement that plaintiff contends the parties entered into and the proper interpretation and application of said agreement.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Jane E. Markey